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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,211	08/18/2003	Mevin S. Mogil	100570-00036	2229

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EXAMINER

EARLY, MICHAEL JACOBY

ART UNIT	PAPER NUMBER
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3744

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/642,211	<b>Applicant(s)</b> MOGIL, MEVIN S.	
	<b>Examiner</b> Michael J. Early	<b>Art Unit</b> 3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003 and 26 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 1-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/18/03; 9/26/03</u> . | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> .           |

Continuation of Attachment(s) 6). Other: Additional Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: 4/15/05; 5/13/05.

### **DETAILED ACTION**

#### **Specification**

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

#### **Claim Objections**

Claims 42 and 55 are objected to because of the following informalities:

- In regard to Claim 42, the limitation recites that access will be provided to the enclosed area (610 – first chamber) of the upper portion (604) when the first closure member (612 – zipper) is moved to an open position. However, through visual inspection of Figures 32-41, it appears that the first closure member only provides access to the enclosed area (608 – second chamber) of the lower portion (602). Therefore, it is recommended that the term “first chamber” be removed from the claim and replaced with --second chamber--. This claim has been examined based upon this presumption to further the prosecution of this present application.
- In regard to Claim 55, the limitation recites that when using a carrying strap (656) to carry the container, the container's first chamber (610) will hang below its second chamber (608). However, through visual inspection of Figures 32-41, it appears that the container's second chamber would intuitively be located above its first chamber. Therefore, it is recommended that the terms “first chamber” and “second chamber” be switched with one another. This claim has been examined based upon this presumption to further the prosecution of this present application.

Appropriate correction is required.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 36-39, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hauk (U.S. 4,796,758) in view of Jacober (U.S. 5,090,526).

Hauk discloses:

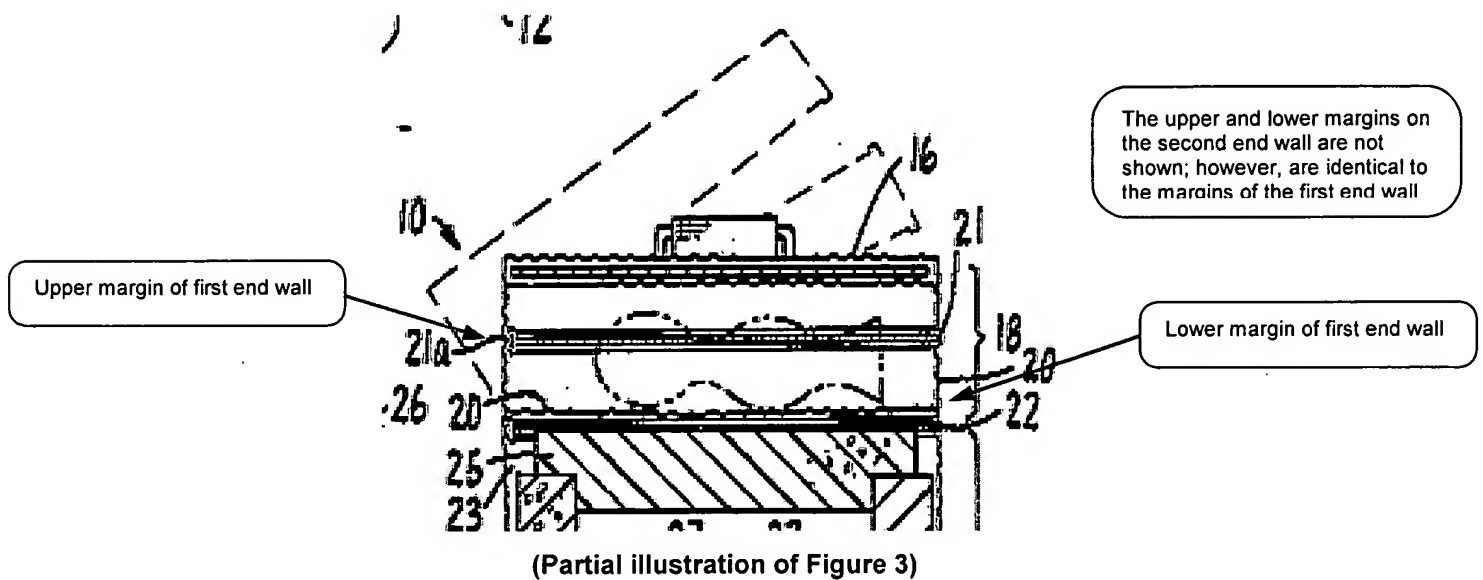
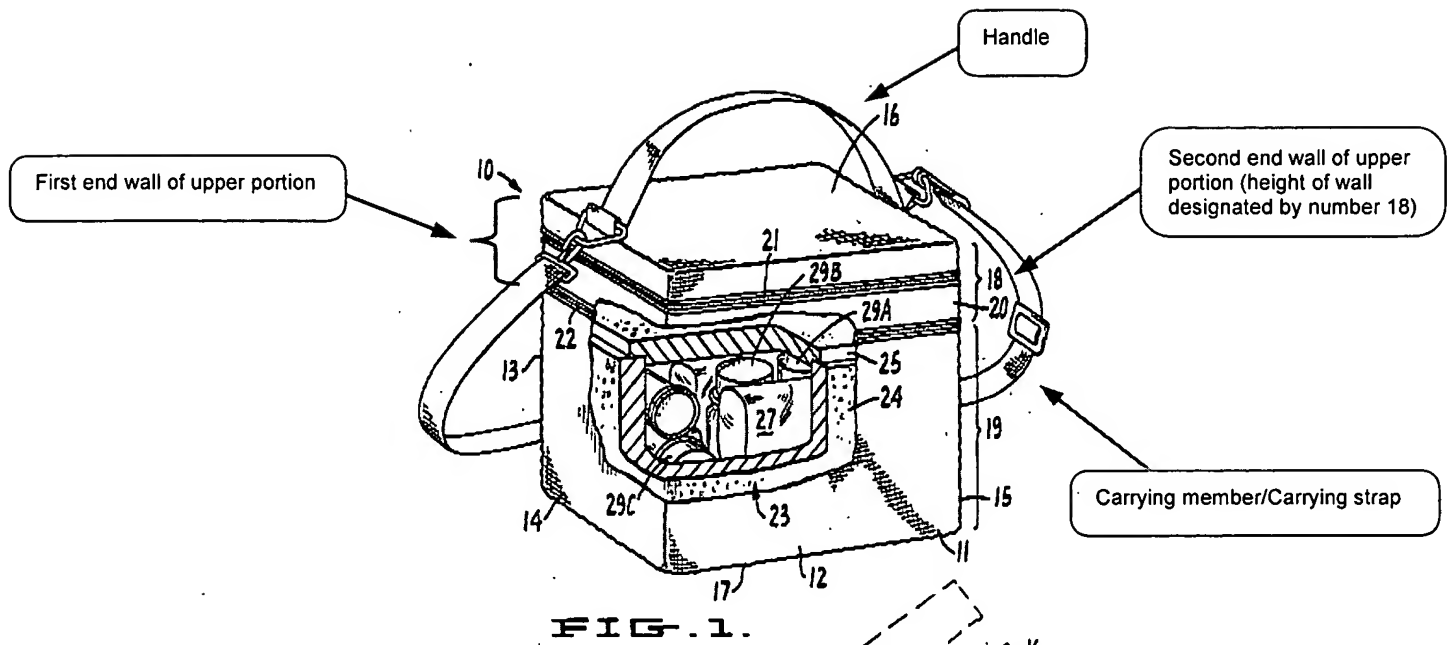
- an insulated lower portion (19 – lower compartment; col. 3, lines 35-46) and an upper portion (18 – upper compartment) (see col. 5, lines 33-36; Figures 2, 8);
- said lower portion having a rectangular base (17 – bottom panel) and rectangular side walls (12, 13, 14, 15 – front, back, side panels) standing upwardly therefrom (as seen in Figures 1, 3);
- said rectangular base having a length and a width, said length being greater than said width (as seen in Figures 1, 2);
- said container assembly having a first closure member (22 – heavy duty zipper) operable to control access to said lower portion thereof (see col. 3, lines 35-41);
- said upper portion having a first end wall, a second end wall (as seen in the illustration of Figure 1);

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- said first end wall having a lower margin and an upper margin (as seen in the partial illustration of Figure 3 below), said lower margin having a length corresponding to said width of said base of said lower portion (as seen in Figure 1);
- said second end wall having a lower margin and an upper margin (as seen in the partial illustration of Figure 3 below), said lower margin of said second end wall having a length corresponding to said width of said base of said lower portion (as seen in Figure 1);
- said first and second end walls of said upper portion being spaced apart a distance corresponding to said length of said base of said lower portion of said container assembly (as seen in Figure 1);
- said container assembly having an externally accessible closure member (21 – heavy duty zipper) controlling access to said upper portion (see col. 3, lines 25-28);
- said upper portion having a first chamber defined therein (as seen in Figures 1, 3);
- said lower portion having a second chamber (23 – interior cavity or chamber) defined therein (as seen in Figures 1, 3);
- said first chamber being fully segregated from said second chamber (as seen in Figures 1, 3);
- said upper portion being movable relative to said lower portion (see col. 3, lines 28-34; Figure 3);
- said upper portion being releasably securable in a fixed position relative to said lower portion (see col. 3, lines 25-42; Figures 1, 3);
- a handle by which to carry said container (as seen in the illustration of Figure 1 below);
- said soft sided insulated container has a center of gravity (obvious), and a carrying member (as seen in the illustration of Figure 1 below) is mounted to said container above said center of gravity (obvious);

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- a carrying strap is mounted to said upper portion of said container (as seen in the illustration of Figure 1 below);
- said upper portion of said container is hinged relative to said lower portion of said container (see col. 3, lines 25-42; Figures 1, 3);
- said upper portion is movable relative to said lower portion when said first closure member is moved to an open position to provide access to said second chamber (as seen in Figures 1, 3).





However, Hauk does not disclose:

- details related to an insulated upper portion;
- details related to the profile of the upper margins along the container's first and second walls;
- details related to a spanning wall;
- details related to a rectangular panel;
- details related to a handle.

Jacober ('526) teaches that it is well known for soft-walled containers to be used to carry an assortment of items (see col. 1, lines 18-25). Jacober ('526) further discloses a soft-walled carrier (10) whose interior (26 – body cavity) is divided into upper and lower portions, via a shelf member (40). In addition, the shelf member is seen to conform to the outline defined by the carrier's side and top panels (14, 16, 18). The carrier is further comprised of intermediate foam layers (38), which are placed within the panels (12, 14, 16, 18, 20) of the container (see col. 5, lines 1-16; Figures 3, 4). The carrier's top panel (18), which has a downwardly concave profile and margins along its sides, spans across the top of the apparatus (as seen in Figures 1, 2). Further disclosed is that the carrier may be carried via handle straps (60) and/or shoulder straps (62) (see col. 5, lines 40-44; Figures 1, 2).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Hauk by incorporating a downwardly concave profile along the apparatus' top panel, as taught by Jacober ('526), for aesthetic purposes.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Hauk by insulating the upper

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portion of the apparatus, as taught by Jacober ('526), to more thoroughly insulate the contents enclosed within the apparatus.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hauk in view of Jacober ('526) and in further view of Young (U.S. 6,015,072).

However, Hauk in view of Jacober ('526) do not disclose:

- details related to a liner.

Young teaches that it is well known for compact luggage pieces and small containers to be used to carry a variety of items (see col. 1, lines 18-41). Young further discloses of a combination collapsible backpack and lined carrying compartment (see Abstract). In addition, it is disclosed that the carrying compartment is comprised of a removable liner (88) (see Abstract; col. 4, lines 63-67; col. 5, lines 1-39; Figure 2).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Hauk in view of Jacober ('526) by incorporating a liner within the apparatus, as taught by Young, to contain spills and for cleansing purposes (see col. 1, lines 29-41; see col. 4, lines 64-67).

Claims 43-46 and 48-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacober (U.S. 5,865,314) in view of Jacober ('526).

Jacobser ('314) discloses:

- an upper portion (72 – room temperature compartment) and a lower portion (46 – cool compartment) hingedly connected thereto (depending on your point of reference, the cool compartment can be seen as the upper portion and the room temperature compartment can be seen as the lower portion; Figures 1-4);
  - said upper portion having:

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- a rectangular bottom wall (48 – divider panel) having a pair of short sides and a pair of long sides (as seen in Figure 3);
  - a top wall (24 – bottom panel) having a front margin, and a rear margin (as seen in Figures 1, 3);
  - a pair of first and second opposed end walls connected to said top wall (as seen in Figures 1, 3);
  - said front margin and said rear margin being located upwardly of respective first and second ones of said long sides of said bottom wall (as seen in Figures 1, 3);
  - said rectangular bottom wall being permanently connected to said rear margin (as seen in Figures 1, 3, 4);
  - said upper portion having a first chamber (72 – room temperature compartment) defined therein;
  - said upper portion having an externally accessible first closure member (44 – double pull zipper), said first closure member being operable to control access to said first chamber (as seen in Figures 1, 3);
  - said lower portion having insulated wall members (see col. 4, lines 7-13) co-operating with said bottom wall of said upper portion to define a second insulated chamber (46 – cool compartment; Figures 1-4);
  - said lower portion having an externally accessible second closure member (38 – double pull zipper), said second closure member being operable to control access to said second chamber (as seen in Figures 1, 2)
- a liner (62 – back liner) mounted within on of said chambers (see col. 4, lines 37-43; Figure 2);
  - said first closure member extends along said first margin of said top wall (as seen in Figures 1, 3);
  - said wall members of said lower portion include:

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- a bottom wall member, a front wall member, a rear wall member and first and second end wall members, and said wall members co-operate to define an open topped box (46 – cool compartment) (as seen in Figures 1, 2);
- said front wall member, rear wall member and end wall members each have an upper margin (as seen in Figures 1, 2);
- said rear margin of said roof of said upper portion is hingedly connected to said upper margin of said rear wall member of said lower portion (as seen in Figures 1-4);
- said second closure member is mounted to said upper margin of said front wall member and to said first long side of said bottom wall of said upper portion, said second closure member being operable to secure said upper portion in a closed position relative to said front wall member (as seen in Figures 1-4);
- said container has a center gravity (obvious), and a suspension member (33 – carrying handle) mounted thereto at a level above said center of gravity (as seen in Figure 4);
- said container has a shoulder strap (33 – carrying handle) mounted thereto (as seen in Figure 1);
- when said second closure member is in an open position, said upper portion of container is soft-sided insulated hingedly displaceable relative to said lower portion of said soft-sided insulated container (as seen in Figures 1, 3).

However, Jacober ('314) does not disclose:

- details related to a top wall that has a downwardly widening profile;
- details related to a mesh pocket member;
- details related to a thermal storage element;
- details related to a suspension member;
- details related to a carrying member;
- details related to a carrying strap.

As disclosed earlier, Jacober ('526) teaches that it is well known for soft-walled containers to be used to carry an assortment of items (see col. 1, lines 18-25). Jacober ('526) further discloses a soft-walled carrier, which is comprised of a top panel (18) that has a downwardly widening profile and extends between two side walls (as seen in Figures 1, 2, 4). It is also shown that each end wall has an upper edge conforming to the profile of the top panel and stands upwardly of one of the short sides of the apparatus' bottom panel (20) (as seen in Figures 1, 2). Further disclosed are handle straps (60) and/or shoulder straps (62) that may be attached to the carrier (see col. 5, lines 40-43; Figures 1, 2). In addition, as disclosed earlier, the interior (26 – body cavity) of the soft-walled carrier (10) is divided into upper and lower portions, via a shelf member (40).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Jacober ('314) by incorporating a downwardly widening profile upon the apparatus' top panel, as taught by Jacober ('526), for aesthetic purposes.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Jacober ('314) by incorporating handle and/or shoulder straps upon the apparatus' top panel, as taught by Jacober ('526), for transporting purposes.

In addition, it would have been obvious for one of ordinary skill in the art at the time of the invention was made to make the plastic strip (54) of Jacober's ('314) apparatus out of a mesh material for aesthetic purposes.

In addition, it would have been obvious for one of ordinary skill in the art at the time of the invention was made to incorporate a thermal storage element within the refreezable

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ice pack storage compartment (58) of Jacober's ('314) apparatus to lengthen the cooling time.

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacober ('314) in view of Mogil (U.S. 6,092,661).

However, Jacober ('314) does not disclose:

- details related to a reflective surface.

Mogil teaches of an insulated pack that is comprised of a compartment that is suitable to hold refreshments at either a warmed or chilled temperature (see Abstract). Mogil further discloses that the lid (32) of the apparatus is comprised of a flexible reflective inner layer (52) (see col. 4, lines 12-21; Figure 7).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Jacober ('314) by incorporating a reflective surface within the apparatus, as taught by Mogil, for aesthetic purposes.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Early whose telephone number is (571) 272-3681. The examiner can normally be reached on Monday - Friday, 7am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

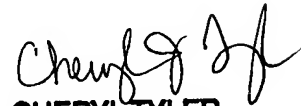
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MJE  
5/1/06

Michael J. Early  
Patent Examiner  
Art Unit 3744



  
**CHERYL TYLER**  
**SUPERVISORY PATENT EXAMINER**